United States Department of Labor Employees' Compensation Appeals Board

C.D. A H		
S.B., Appellant)	
and) Docket No. 13-952) Issued: August 12, 20)13
DEPARTMENT OF THE TREASURY,)	
BUREAU OF PRINTING & ENGRAVING,)	
Fort Worth, TX, Employer)	
	_)	
Appearances:	Case Submitted on the Record	d
Ditty S. Bhatti, Esq., for the appellant		
Office of Solicitor, for the Director		

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge COLLEEN DUFFY KIKO, Judge PATRICIA HOWARD FITZGERALD, Judge

On March 12, 2012 appellant, through counsel, filed a timely appeal from the February 21, 2013 decision of the Office of Workers' Compensation Programs (OWCP), which found that his reconsideration request was untimely and did not present clear evidence of error. The appeal was docketed as No. 13-952.

The Board notes that on January 31, 2012, OWCP denied appellant's occupational disease claim finding that the medical evidence did not contain a clear explanation from his physician addressing how a medical condition was a result of work activity. In a letter dated June 6, 2012, an attorney with the Bhatti Law Firm contacted OWCP and indicated that she was representing appellant with regard to his claim, to include "the reconsideration to be filed within the year." In a letter to OWCP dated December 1, 2012, counsel again indicated her representation in appellant's "reconsideration" appeal. On January 14, 2013 OWCP advised counsel that it needed a written statement from appellant authorizing her representation. In a letter dated January 14, 2013, appellant confirmed that he had retained the Bhatti Law Firm to represent him with regard to his "reconsideration appeal." The letter was received by OWCP on January 22, 2013. In a decision dated February 21, 2013, OWCP found that the request was untimely filed and failed to present clear evidence of error.

The Board has considered the matter and finds that the January 14, 2013 request constituted a timely request for reconsideration. Section 10.607(a) of the implementing regulations provide that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought. The Board notes that the last merit decision was dated January 31, 2012 and appellant's request for reconsideration was received by OWCP on January 22, 2013, less than one year from the January 31, 2012 merit decision. Because appellant filed a timely reconsideration request, the case will be remanded to OWCP for application of the standard for reviewing timely requests for reconsideration. The "clear evidence of error" standard utilized by OWCP in its February 21, 2013 decision is appropriate only for untimely reconsideration requests. After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

The Board will set aside OWCP's February 21, 2013 decision and remand the case for an appropriate final decision on the merits of appellant's claim for an injury in the performance of duty under section 8128(a).

IT IS HEREBY ORDERED THAT the February 21, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded.

Issued: August 12, 2013 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board

¹ 20 C.F.R. § 10.607(a).

² See id. at § 10.606(b)(2).